Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby files its reply to comments on the Commission's Notice of Proposed Rulemaking and Order (NPRM and Order) in the above-captioned proceeding.[1] In the NPRM and Order, the Commission sought comments on the issues from its Ninth Report and Order in the Universal Service proceeding[2] remanded by the United States Court of Appeals for the Tenth Circuit.[3] Specifically, the Commission sought comment on three issues: 1) how it should define the terms "reasonably comparable" and "sufficient"; 2) whether, in light of the interpretation of those terms, the Commission can and should maintain the funding benchmark at 135 percent of the national average; and 3) how and whether the Commission should induce states to implement state universal service policies.[4]

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[1] Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order, CC Docket No. 96-45, (rel. Feb. 15, 2002).
[2] Federal-State Joint Board on Universal Service, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd. 20432 (1999) (*Ninth Report and Order*).
[3] *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).
[4] The 10th Circuit specifically enumerated these issues. The court did not, as SBC

Summary and Introduction

In comments, parties proposed a broad range of definitions and changes to the existing support mechanism. Sprint urges the Commission to recognize that its universal service support regime goes well beyond the Ninth Report and Order, to include access reform and rural support. Any clarifications of the definitions must be developed in the context of the actions taken in these other dockets. Specifically, it is critical that the Commission consider its definitions of reasonable comparability and sufficiency in relation to the principle of affordability, which was found by the Commission to exist under the current structure, not only in its Ninth Report and Order, but also in the Rural LEC Order.[5] Even more importantly, any revisions or clarifications must be made with a view toward a universal service support regime that facilitates the development of competition in the local telephone market. Sprint urges the Commission to not be tempted by some commenting parties' proposals that years of work resulting in the existing program be abandoned for a complete overhaul, but to instead build on the existing framework and, if necessary, implement changes only after referring appropriate issues to the joint board.

Background

In the NPRM and Order, the Commission sought comments on the issues from the Ninth Report and Order remanded by the United States Court of Appeals for the Tenth

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contends in its comments, call for a "comprehensive reform proceeding to replace the outdated system of implicit subsidies with a NATIONAL plan for universal service." (SBC Comments at 2).

[5] Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty - Second Order on Reconsideration and Further Notice of Proposed Rulemaking, CC

Circuit. The Ninth Report and Order established a Federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. The court remanded the Ninth Report and Order to the Commission for further consideration and explanation of its decision. Specifically, the court remanded the Ninth Report and Order to the Commission to: 1) define the terms "reasonably comparable" and "sufficient"; 2) explain setting the funding benchmark at 135 percent of the national average; 3) consider inducements for state universal service mechanisms; and 4) explain how the funding mechanism will interact with other universal service programs. The Commission sought comment on issues 1-3.

In response to the NPRM, the Commission received comments from 15 parties with suggestions ranging from leaving the existing mechanism intact to completely abandoning the work to date for a new, national system. As discussed below, Sprint believes that the Commission has made significant strides and reasonably balanced competing interests and principles and there is no reason to abandon the results of years' of development for a new program. On the other hand, to the extent that the Commission determines that changes might be prudent, Sprint urges the Commission to defer to the Federal-State Joint Board for considered recommendations.

Discussion

In remanding the Ninth Report and Order, the court recognized this proceeding for what it is --one part of the larger effort to establish an effective universal service support mechanism. The court clearly stated that "the orders challenged in this case concern only a piece of Federal support for universal service… they do not address

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Docket No. 96-45 (rel. March 23, 2001).

funding for "rural carriers," which [has since been] covered by later orders." Further, it recognized that "the present orders deal with reforming explicit federal support. The FCC [addressed] implicit federal support built into interstate access charges in a separate order."[6] The court did not, as some commenting parties suggest[7], propose that the Commission use this proceeding as a vehicle for the complete overhaul of universal service support.[8] Nor did it propose that the orders on remand be considered in a vacuum. Terms such as reasonable comparability and sufficiency can only be defined relative to other principles in the statute, primarily affordability and the promotion of local competition.

The Court of Appeals remanded the Commission's order because the court found itself unable to review the rationality of the order, stating that the FCC had "failed to articulate a satisfactory explanation for its decisions" to inform the court's review. [9] The court therefore gave the Commission "an opportunity to explain further its complete plan for supporting universal service," but stated that it "did not necessarily require the FCC to resolve finally all of these issues at once."[10]

A. Definitions of Reasonably Comparable and Sufficient

The Commission sought comment on the definitions of "reasonably comparable" and "sufficient" in order to determine reasonable comparability of rates between urban

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[6] 258 F.3d at 1205.
[7] *See*, e.g., SBC Comments at 2,
[8] *Accord* BellSouth Comments at 3 ("meeting the mandate of the Court does not necessitate abandoning the structure of the current high-cost universal service fund.").
[9] 258 F.3d at 1201.
[10] *Id*. at 1205.

and rural areas under Section 254 (b)(3) of the Act, and sufficiency of the mechanism to preserve and advance universal service, under Sections 254(b)(5) and (e).

Defining reasonably comparable with regard to rates presents the Commission and the states with a difficult responsibility. As the Commission has noted, costs in some rural regions may be 100 times greater than costs in urban regions. Under such circumstances, Sprint agrees with AT&T's comments that variations of between 70 and 80 percent can be deemed reasonably comparable.[11]

Sprint disagrees with commenters such as the Maine, Montana, and Vermont Public Service Boards who advocate a very narrow difference between urban and rural rates, and tying rural rates to urban costs. Such an approach would grossly understate the differences in costs, would bloat subsidies without regard to need, would threaten universal service and would thwart local competition. Such an increase in subsidy would impose a huge burden on low cost urban consumers, and, importantly in the context of this proceeding, would do so without any regard for affordability of service in rural areas. As AT&T states in its comments, the resulting increase in subsidy could, in fact, threaten affordability and universal service for those in urban areas who would be forced to bear the burden.[12]

The court contemplated that the FCC could balance the principles of universal service against the burden of providing contributions to universal service, and the Commission is correct in doing so.[13] Proposals to vastly increase Federal subsidies, particularly in areas served by urban carriers, would result in exactly the sort of

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[11] AT&T Comments at 8.
[12] *Id.*
[13] 258 F.3d at 1200.

exaggerated subsidization that proves unacceptably expansive when balanced with the principle of affordability.

Other commenters, such as the state of Missouri, the Ohio Consumers' Counsel et al., and NTCA, propose that non-cost factors such as "value of service," particularly calling scope and custom calling features such as touchtone service, Caller ID, call waiting, and call forwarding be considered in defining reasonable comparability. Value of service factors are misplaced in the evaluation of the provision of universal service to high cost areas because these factors have no relationship to the actual cost of providing local service. The concept is manifestly inconsistent with that of local competition which, as the Commission has recognized in a myriad of post-Telecommunications Act of 1996 proceedings, won't be realized until local rates move closer to cost.

In these regards, Sprint notes that Section 254(b) of the Act mandates that consumers in all regions have access to "telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable… ." It does not state that all consumers must have identical calling areas and custom features made available at identical rates.

Furthermore, the cost of connecting the customer to the public network (typically 90 percent of the cost of local service) does not vary whether the customer makes one or one hundred calls, or whether the call is destined for the next door neighbor or around the globe. Given that the underlying economics of providing local service are unaffected by the number of parties that can be called toll free, it is unreasonable, not to mention inconsistent with the development of local competition, to suggest that calling scope

should be considered as a factor in determining comparability for Universal Service purposes.

B. Benchmark

The Commission sought comment on whether it should adopt a different benchmark or benchmarks or whether it should continue to use the 135 percent benchmark. It also sought comment on whether it should continue to use a benchmark based on nationwide average cost and compare it to statewide average cost. It is important to note that the 10th Circuit did not direct the Commission to revise the 135 per cent benchmark. Sprint opposes suggestions to change the benchmark simply to increase the size of the fund.[14] Requests for revisions without first addressing the principle of affordability are particularly unwarranted, not to mention inconsistent with the Act, in Sprint's view. If the Commission deems it prudent to revisit the benchmark, it can, and should, seek input from the Joint Board.

C. State Inducements

The question of how to properly induce individual states to implement universal service mechanisms is perhaps the most difficult raised by the Tenth Circuit remand; it is difficult because many states have already successfully implemented explicit support mechanisms and therefore, require no further inducement. The Commission should take great care before disrupting state funding mechanisms. Rather, to the extent that the federal mechanism may be re-visited in an attempt to encourage states to take action, the

[14] Proposals such as that made by BellSouth, that the existing fund be supplemented using "tiered" benchmarks or by the Rural State Commissions that the national average benchmark be reduced to 125 percent of urban rates merely serve to expand the size of the fund for high-cost areas without considering the corresponding cost to low-cost areas or whether existing rates are affordable.

mechanism must not undermine the work already accomplished at the state level and state actions must be guided by the principle of affordability and the requirement to encourage local competition. The proposed inducement of conditioning Federal support to states on their acting in accordance with Federal Universal Service guidelines, supported by several commenters, might prove workable. For example, conditioning Federal support on compliance with Section 254 would probably not undermine state funding mechanisms, but would ensure a basic level of state support. In any event, Sprint suggests that the best means of establishing appropriate Federal inducements is through the Federal State Joint Board, which could devise a scheme that is mutually agreeable to state and Federal interests.

Conclusion

Sprint urges the Commission to stay the course and work within the existing regime rather than abandon years of work developing its Universal Service programs.

Respectfully submitted,

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By: /s/

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April 25, 2002

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 25th day of April 2002 served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing Reply Comments in CC Docket No. 96-45 was filed this date with the Secretary, Federal Communications Commission, and to the persons listed below.

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